THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION Nos. 2337 of 2005 &

4713 of 2005

Date:29 .09.2005

W.P.No. 2337 of 2005:

Between:

Dr. G.Venkateshwar Rao, s/o. G.Gopal Rao Naidu,

Scientist-III, CDFD, r/o. 1-11-90, Golnaka,

Alwal, Secunderabad

…Petitioner

and

1)Centre for DNA Fingerprinting and Diagnostics (CDFD),

ECIL Road, Nacharam, Hyderabad-500076

Rep. by its Director & 3 others

…Respondents

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COMMON ORDER:

1. Challenging the official memorandum dated 20.09.2004 issued by the second respondent on behalf of the first respondent and for consequential direction to respondents 1 and 2 to restore the petitioner to the post of Chief and Staff Scientist DNA fingerprinting, the Writ Petition No. 2337 of 2005 is filed.

2. The brief facts that are necessary for disposal of this Writ Petition are as follows:

The first respondent is a registered society and funded by the Government of India and its Governing Council consists of Senior Government Officials; that the petitioner was appointed in first respondent organization as a Scientist-III; that on a false complaint given by the wife of petitioner, he was convicted under Section 498A in C.C. No.262 of 1996 on the file of the Judicial Magistrate of First Class, Medchal, Ranga Reddy district, in the year 2002, whereupon

the petitioner was removed from service; but the conviction was set aside in Criminal Appeal No.120 of 2002 on the file of IV Additional District & Sessions Judge (FTC), Ranga Reddy district on 27.01.2004; as the respondents did not reinstate the petitioner into service in spite of receiving copy of the judgment of the appellate Court acquitting him and in spite of representations made by him, he filed Writ Petition No.6679 of 2004 seeking a direction in this connection; as the respondents did not consider his case despite direction by this Court, he filed Contempt Case No.586 of 2004 in the said Writ Petition; the Writ Petition was allowed by this Court with costs of Rs.5,000/- payable by the respondents to him; thereafter, the petitioner was reinstated into service and joined on 16.09.2004 and the respondents issued office memorandum of even date accepting his joining report; the petitioner waited to take charge of the post till the third respondent, who was in-charge of the post which the petitioner was holding earlier, returned on 20.09.2004 from official tour, and on that day the second respondent issued the impugned memo dated 20.09.2004 whereunder the petitioner was made head of the independent scientific group of newly formed laboratory called "Laboratory of DNA Fingerprinting Research (LDFR)", which is only as a punishment to him for initiating contempt proceedings against the second respondent. It is further stated that the creation of the new laboratory is contrary to Rules and Regulations, Bye-laws of the first respondent-organisation, and without authority, jurisdiction and application of mind; the second respondent did not take any approval from any authority to establish the new laboratory; hence, the Writ Petition.

3. The respondents filed Counter affidavit denying the averments in the petition and contending that the first respondent-institution, is an autonomous body under the Ministry of Science and Technology, Government of India, established and registered with certain objectives; that besides concealing conviction in the criminal court, there are other serious acts and omissions committed by the

petitioner; the newly created LDFR is not a new activity and the petitioner was transferred for administrative convenience and exigencies of service for the best interests of Centre; that it is within the powers conferred on the Director as per the Bye laws to take the above decisions for administration and management of the Centre; that it is duty of the scientists and other employees to undertake such duties as may be entrusted to them either by the Governing Council or the Director, who is entitled to make use of services of any Scientist in the related area, which can not be questioned; on account of the impugned order, the petitioner is not put to any disadvantageous position in rank or pay or other benefits; the past experience of the petitioner is also useful to him in discharging his duties at new institute; that the petitioner was suspended vide proceedings dated 07.03.2005 in contemplation of disciplinary proceedings for certain serious acts and omissions; hence, it is prayed to dismiss the Writ Petition.

4. Challenging the order dated 07.03.2005 of the second respondent dated 07.03.2005 issued on behalf of the first respondent, the Writ Petition No. 4713 of 2005 is filed.

5 . The petitioner, who is petitioner in the first Writ Petition also, reiterated the facts stated in the said Writ Petition and added that he took charge as Head of the LDFR on 20.09.2004; thereafter, he was put to lot of inconvenience at every stage without providing lab space, man power and material; till the date of suspension i.e. 07.03.2005, he was kept idle; so, he filed the first Writ Petition to restore his earlier position; the second respondent issued him an appreciation letter on 13.01.2005; though he directed to submit the prescribed format for promotion, he was denied the requisite records and documents to submit the same; after several efforts, he addressed a letter on 07.03.2005 requesting the second respondent to reconsider and provide them, otherwise his career will be in

jeopardy and cause irreparable loss to promotional prospects; but, surprisingly, he was served with the impugned proceedings placing him under suspension with immediate effect, further directing him not to leave head quarters without obtaining prior permission of the second respondent; that there are no reasons to place him under suspension as he did not do sufficient work in the new laboratory; it will have a disastrous impact on his reputation; hence, the Writ Petition.

6. The respondents filed counter affidavit denying the averments in the petition, reiterated their contentions in the first Writ Petition and added that in contemplation of disciplinary proceedings for serious acts and omissions, the petitioner was rightly placed under suspension as per rules; the allegations include financial irregularities, misappropriation of funds, concealment of material facts and other grave charges during his tenure as Scientist-III; there is no *mala fide* intention on the part of respondents; that the appreciation letter dated 13.01.2005 is not a personal letter to the petitioner alone, but is given to each and every employee; as per Bye-laws, appeal lies to Appellate Authority against the order of suspension; the petitioner was involved in the research area before his suspension as well; hence, it is prayed to dismiss the Writ Petition.

7. With regard to the suspension pending enquiry, the learned counsel for the petitioner contended that the impugned proceedings do not indicate any reasons at all and it is a *mala fide* exercise of power by the second respondent; that the petitioner was unaware of the grounds and reasons for placing him under suspension; that in the month of January, 2005, the second respondent has given a clean chit by way of addressing an appreciation letter and the suspension order would have disastrous impact on the good reputation of the petitioner; that when the first respondent is not acting based on the order passed in the criminal court, he filed Writ Petition

No. 6679 of 2004 and this Court vide interim order dated 13.04.2004, directed the first respondent to consider the case of the petitioner for reinstatement by setting aside the dismissal order from service on the ground that his conviction was set aside by the appellate court; when that order was not implemented, the petitioner filed a Contempt Case No.586 of 2004, wherein this Court found that the respondents have willfully disobeyed the orders and so, the Writ Petition was allowed with costs of Rs.5,000/-; after disposal of the Writ Petition, with a *mala fide* intention, the petitioner was placed under suspension; that till now, no charge sheet has been issued to the petitioner; hence, he prays to set aside the same.

8. In so far as the transfer is concerned, his contention is that the second respondent is not competent to create the research laboratory and consequently, he can not have power to transfer the petitioner and it amounts to change of service conditions; hence, he prays to set aside the same.

9. On the other hand, regarding the suspension order, the learned counsel for the respondents contended that as serious charges are found, the first respondent is contemplating to take a disciplinary action against the petitioner; that for not reinstating the petitioner, the reason is that there is ambiguity in the judgment passed by the criminal court viz. there is no specific finding with regard to acquittal on one of the charges for which he was convicted by the trial Court; that because of the pendency of the Writ Petition, the respondents could not proceed further; they will complete the enquiry within a period of 3 or 4 months and the charge sheet is ready to be issued to the petitioner.

10. In so far as transfer, the learned counsel for the respondents contended that the challenge to the transfer order has been made five months after its issuance and it is not a change of service

conditions; that the petitioner is well-versed with the research work and the first respondent-institute is basically a research institute and therefore, the Director has power to create a Laboratory; that no *mala fides* are attributed against the Director; hence, he prayed to dismiss the Writ Petitions.

11. The learned counsel for the petitioner placed strong reliance on the judgment of this Court in *Prof. V.Nagesdwar Rao v. Osmania University, Hyderabad & another*, wherein it is held: (para 18)

> "It is, however, to be noted that the appointing authority has been vested with wide discretionary power to place an employee under suspension pending disciplinary proceedings. If the discretion is exercised without any principle or without any rule, it is a situation amounting to antithesis of rule of law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whims or fancy or caprice of the authority. The judicial scrutiny can not be foreclosed by a mere statement of the disciplinary authority that it has the discretion to place the employee under suspension pending enquiry."

That is a case where the suspension of a Professor was for alleged irregularities outside the sphere of his employment and that too without there being any *prima facie* evidence. In those circumstances, it was held that the discretion should be guided by law or governed by known principles of rules and not on whims or fancy or caprice of the authority. Each case has to be decided on its own merits. The allegations levelled against the petitioner herein *prima facie* show about the alleged misconduct of the petitioner.

12. The learned counsel for the petitioner relied on another decision reported in *State of Orissa v. Bimal Kumar Mohanty,* wherein it is held: (para 12)

> "It is thus settled law that normally when an appointed authority or

> the disciplinary authority seeks to suspend an employee pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee…"

Even as per the above decision, if it is a case of serious misconduct, the appointing authority can place an employee under suspension on a contemplated disciplinary action.

13. The learned counsel for the petitioner relied on another decision in *P.Chandra Mouli v. Government of A.P. & others* wherein it is held : (para 13)

> "*Mala fide* action : This is yet another ground of attack on which rival submissions in elaboration had been made by both the Counsel representing the respective parties. Express or implied, direct or indirect *mala fides*, otherwise known as malice in fact and malice in law, no doubt may have to be proved by the person asserting such a ground. The particulars of the allegations in relation thereto had been made in the O.A. and also in the present writ petition and no doubt the same had been specifically denied. It is pertinent to note at this juncture itself that the order which had been impugned in the O.A. was preceded by an order of transfer said to be an order of surrender made by the 3rd respondent. It is no doubt difficult to establish the ground of *mala fides*. Submissions at length were made that the impugned order in the O.A. was made by the 2nd respondent and not by the 3rd respondent and the 2nd respondent was not made party *eo nominee* but the 3rd respondent was made a party *eo nominee* as 4th respondent, but it is pertinent to note that the specific stand taken by the writ petitioner is that the 3rd respondent influenced the decision making process by virtue of

> which the 2nd respondent made the suspension order. The report of the 5th respondent surprisingly had not been referred to in the order of suspension made by the 2nd respondent. Doctrine of *mala fides* having impact on the decision making process can not be totally ignored by Courts in the realm of administrative law. Every aspect, if clear, though not direct, may have to be taken note of, lest it would result in unjust decisions vitiated by technicalities. Scrutiny in this sphere to be more careful than in cases of direct *mala fides*. If direct *mala fides* alleged if any are very remote and having a wider gap not having any nexus, the same should not be considered."

In this case, though the second respondent was made *eo nominee*, no specific allegations or *mala fides* are attributed against him.

1 4 . With regard to *mala fides*, the learned counsel for the respondents relied upon a decision in *Prabodh Sagar v. Punjab State Electricity Board & others*, wherein it is held that the basis of the charge is malice which in common acceptation, means and implies spite or ill-will and the same is question of fact. It is also held that mere user of the word "*mala fide*' by the petitioner would not by itself make the petition entertainable and the Court must scan the factual aspect and come to its own conclusion.

15. The learned counsel for respondents also relied on a decision in *Delhi Development Authority & another v. Uee Electricals Engg. (P) Ltd. & another,* wherein it is held, "… It can not be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

The learned counsel also relied on another decision in *State of U.P. & another v. V.N. Prasad (Dr.),* wherein it is held, "…We are of the

opinion that at the stage at which the matter was brought to engage the attention of the High Court, there was no *prima facie* material to establish any *mala fides* which required strong and convincing evidence…"

The learned counsel also relied on another decision in *U.P.Rajya Krishi Utpadan Mandi Parishad & Ors. V. Sanjiv Rajan,* wherein it is held that the Court should not interfere with the order of suspension unless it is passed *mala fide* and without there being even *prima facie* evidence on record connecting the employee with the misconduct in question.

The learned counsel for respondents also relied on a decision in *State of Haryana v. Hari Ram Yadav & others,* wherein it is held, "The mere fact that the impugned order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place delinquent under suspension does not render the said order invalid."

The learned counsel also relied on a decision of Full Bench of this Court in *M.Nagalakshmiah v. The State of Andhra Pradesh and ors.,* wherein it is held that the order of suspension passed under Rule 13 of the Andhra Pradesh Civil Services (Classifi-cation, Control and Appeal) Rules, 1963 cannot but be an administrative order and it could not be pointed out as to why such an order can be said to be quasi judicial.

The learned counsel also relied on another decision in *State of Gujarat & Another v. Dariyasing Tarachand Jhat,* wherein it is held (para 6) "… The subjective satisfaction of the concerned authority is enough to pass the order of suspension. The suspension order is an administrative order simpliciter in a way…"

16. Bearing the above principles in mind, it has to be seen whether the impugned order suffers from any infirmities.

17. By impugned proceedings dated 07.03.2005, the petitioner was placed under suspension by the appointing authority stating that disciplinary proceedings are contemplated against him and therefore, the appointing authority, in exercise of powers conferred under CDFD Bye Law 9.13 Sub Rule 1 of Rule 10 of CCS(CCA) Rules, 1965, placed the petitioner under suspension with immediate effect and it was further ordered that during the period the order remains in force, the petitioner should be in Hyderabad and should not leave the head quarters without obtaining prior permission of the undersigned.

18. Law recognizes three kinds of suspension, viz.
a) suspension as a punishment; b) suspension during or in contemplation of disciplinary proceedings or an enquiry;
c) suspension in the sense that the employee may merely be forbidden from discharging his duties during the pendency of an enquiry against him. The meaning and implications of these three kinds of suspension were explained by a Constitution Bench of the Apex Court in *V.P.Gindroniya v. State of M.P.,* wherein it is held as follows:

> "Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions of regulating the conditions of service. But, the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the

terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words, the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract."

19. Sub-Rule (1) of Rule 10 of C.C.A. Rules reads as follows:

"The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension,

(a) where a disciplinary proceeding against him is contemplated or is pending; …"

Sub-Rule (6) thereof provides for review of the suspension order to revoke the suspension after expiry of 90 days from the date of suspension. It also provides that extension of the suspension shall not be for a period exceeding 180 days at a time, and before the expiry of 90 days from the date of order of suspension, the authority can extend or revoke the suspension.

Sub-Rule (7) thereof provides that an order of suspension made or deemed to have been made under Sub-Rule (1) or (2) or Rule 10, shall not be valid after the period of 90 days.

20. So, basing on the above provisions, it is contended by the learned counsel for the petitioner that no review was taken place before expiry of 90 days and therefore, there is no valid suspension order and the petitioner has to be taken into service.

21. Duration of the suspension order will depend upon the terms of the order or the provisions of the Rules. The service rules governing the service conditions of the petitioner provide that an employee may

be placed under suspension where a disciplinary proceeding against him is contemplated or is pending. Therefore, by virtue of the Rules, an employee can be placed under suspension as soon as a decision is taken to initiate disciplinary proceedings against him. But, at the same time, the order of suspension can only be made after the competent authority comes to conclusion that there are sufficient reasons for keeping the employee under suspension. In other words, there has to be a proper application of mind and satisfaction that the suspension is called for in a given case. Absence of recital in the order of suspension regarding the requisite satisfaction will invalidate the order. Therefore, there is an express power conferred on the appointing authority to place an employee under suspension where the disciplinary proceeding against him is contemplated.

22. Normally, in the course of judicial review in such matters, Courts will not interfere with the orders of suspension pending enquiry unless good grounds are made out like *mala fides*. So also, if there is inordinate and unexplained delay in initiating the disciplinary proceedings, the Court may direct the suspension order to be revocated. But, position may be otherwise depending upon the nature of the irregularities or offences alleged against the employee. At any rate, the delay must be for an unreasonable period to revoke the order.

23. In the case on hand, draft charge sheet has been prepared, a copy of which is made available to this Court. As seen from it, five charges have been framed. The first charge is that at the time of appointment, he concealed information regarding pendency of Criminal Case in crime no.234 of 1995 under Section 498A I.P.C. of Alwal police station; the second charge is that he has not accounted nor remitted amounts collected/paid to him at various courts for the expert services rendered/deposition given before the concerned courts; the third charge is that he has not settled the outstanding

advances drawn by him from the organization to undertake journeys for attending courts and thereby misappropriated public funds; the fourth charge is that he intentionally refused to hand over the charge to the designated staff when he was suspended by proceedings dated 26.08.2002 and he had left the office carrying certain files; the fifth charge is that during the relevant period as sole custodian of the DNA Fingerprinting Lab, he mismanaged the system of organizing files with deliberate and *mala fide* intention, leading to loss of files.

24. As seen from the draft charge sheet, there are serious irregularities including on financial aspects. No specific *mala fides* are attributed to the appointing authority in placing him under suspension. It is only stated that *mala fide* intention of second respondent is much amply clear because the Director directed the petitioner not to leave head quarters without obtaining his prior permission. Imposing such a restriction does not mean that there is a *mala fide* intention on the part of the respondents. Though the petitioner has to give evidence in the Courts regarding his examination of documents, but at the same time, there is no absolute restriction imposed on the petitioner directing him not to leave head quarters. What all stated in the impugned proceedings is that he has to obtain prior permission from the Director to leave head quarters. Therefore, it can not be said that it is an action with *mala fide* intention. Without knowing the charges contemplated against the petitioner, it may be a fact that the second respondent gave a clean chit by way of appreciation letter in the month of January, 2005.

25. It is also one of the contentions of the learned counsel for the petitioner that because of the observations made in Writ Petition No. 6679 of 2004, dated 03.09.2004, allowing the Writ Petition with costs of Rs. 5000/- payable by the respondents herein to the petitioner, the present impugned order is passed. If really the said contention is accepted, then certainly the respondents should have placed the

petitioner under suspension immediately after disposal of the Writ Petition. They need not have waited for about 9 months. Therefore, it can not be a ground for setting aside the order.

26. The office file maintained by the respondent is produced before this Court. The suspension has been reviewed from time to time by the appointing authority. Therefore, viewed from any angle, the suspension order can not be said to be vitiated by reason of *mala fides* or delay. Hence, there are no grounds to interfere with the suspension order. Further, it is made clear that the respondents shall complete the enquiry after giving reasonable opportunity to the petitioner within a period of four months from today. It is also made clear that the petitioner shall co-operate with the enquiry.

27. With regard to transfer, it is contended by the learned counsel for the petitioner that the second respondent is not the competent to create a research institute and the transfer is against the appointment. Both the counsels relied upon certain decisions in support of their respective contentions with regard to transfer of an employee. Therefore, it would be relevant to refer the decisions before going into the merits of the Writ Petition.

28. Learned counsel for the petitioner relied on a judgment of this Court in Writ Petition No.1111 of 1992, dated 17.07.1992 where the impugned order of transfer of the petitioner therein was held arbitrary and unreasonable and violative of Article 14 of the Constitution of India. But, it is a case where the petitioner therein was transferred as General Manager-Machinery division at Nagarjunasagar whereas he was appointed as General Manager-Marketing. The qualifications required for the post of General Manager (marketing) and General Manager (machinery) are entirely different. Therefore, it amounts to a change of service conditions. In such circumstances, it was held that there is a change in the service conditions.

29. The learned counsel for the petitioner also relied on a decision in *N.K.Singh v. Union of India & others,* wherein it is held that challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out.

The learned counsel also relied on another decision in *R.Sudhakar v. M/s. Indian Immunologicals, Hyderabad,* wherein it is held that it is now well settled principle in administrative law, that an officer holding a particular rank/position can be transferred and posted only to a post which is equivalent to that post in all respects, otherwise, it amounts to effecting the status held by the incumbent.

30. Whereas, the learned counsel for the respondents placed strong reliance on a decision in *State of U.P. & ors. V. Gobardhan Lal,* wherein it is held as follows: (para 7)

> "It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service."

31. In another decision relied on by the learned counsel for the respondents in *National Hydroelectric Power Corporation Ltd. V. Shri Bhagwan & another*, it is held as follows: (para 5)

> "… It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public

> interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals can not interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned…"

The learned counsel for the respondents lastly relied on an decision i n *Union of India and others v. Janardhan Debanath & another,* wherein it is held, (para 9)

> "… The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of *mala fide* exercise or stated to be in violation of statutory provisions prohibiting any such transfer the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned…"

32. From the above decisions, it is clear that unless the transfer order is vitiated by *mala fides* or the transfer is against the rules and the employer has no power to transfer the employee, normally this Court will not interfere with such transfers. The petitioner was appointed by proceedings dated 28.10.1997. One of the terms and

conditions of the appointment order is that the petitioner would be expected to provide DNA fingerprinting and diagnostics services and perform any other duties assigned to him from time to time commensurate with his ability and qualifications. Experience of techniques in molecular biology and hands on experience of modern methods such as PCR, cloning, sequencing, etc. used in biological research; familiarity with DNA technologies are also desirable to the said job. The description of the job would indicate providing DNA fingerprinting and diagnostics services and perform any other duties assigned from time to time commensurate with qualifications. The main object of the first respondent-institute is to carry out scientific research pertaining to DNA profiling and related analysis in civil cases and to provide DNA fingerprinting and related analysis to crime investigation agencies, etc. To achieve certain objectives, the first respondent established several laboratories. The research to be conducted in LDFR, to which place the petitioner was transferred, is not abstract research, but research aimed at improving methods in DNA fingerprinting. The petitioner was having past experience and he was engaged extensively in the field in the past. Therefore, the second respondent thought that his experience is essential and useful as head of LDFR. It is clear from the bio-data of the petitioner on record that he had extensive training and education at several prominent publications to his credit and he would be eminently suited as Head of LDFR. By virtue of this posting, the service conditions of the petitioner will not be affected. Therefore, the transfer order can not be said to be contrary to the terms of the appointment order.

33. It is the main contention of the petitioner that the impugned order is against the terms and conditions of the appointment. As already stated, it is stated in the appointment order itself that the petitioner has to perform any other duties assigned to him from time to time. The other ground on which it is attacked is that the order is not a speaking order, passed without application of mind. It is for the

respondents to take appropriate decision to post an employee at a particular place for administrative convenience and also achieve objectives of the institute. For that purpose, the transfer order need not contain any reasons. Though it is stated that it is a *mala fide* exercise of power, but from the allegations in the affidavit, it is clear that no *mala fides* are inferred.

34. The other contention of the learned counsel for the petitioner is that the second respondent can not create a laboratory, which is contravention of the Bye-laws. The first respondent elaborately is governed by the rules and regulations of the Centre for DNA Fingerprinting & Diagnostics. Rule 47 thereof reads as follows:

> "Subject to any order that may be passed by the Chairman in exercise of the powers delegated to him by the Governing Council, and the decisions of the Governing Council, the Director shall be responsible for the proper administrative administration of the affairs and funds of the Society under the direction and guidance of the Governing Council. He shall be vested with such executive and administrative powers of the Society as may be necessary or incidental for the purpose, subject to these rules and bye-laws."

Section 48 thereof, reads as follows:

> "The Director shall subject to the provisions of these rules and bye-laws and decisions of the Governing Council and Chairman, exercise general supervision and disciplinary control over the officers and the staff of the Society, and prescribe their duties and functions."

Therefore, by virtue of these Rules, the Director is vested with executive and administrative powers of the Society. But, his actions are subject to the orders passed by the Chairman or the Governing Council. The Director can prescribe the duties and functions of the staff.

35. As seen from the proceedings dated 20.10.2004, the Director

created a DNA Fingerprinting Research Group to be called as “Laboratory of DNA Fingerprinting Research (LDFR)” and posted the petitioner as Head of the laboratory. As per bye-law 15 of the Centre, it shall be the duty of the Director to carry out work of the CDFD in accordance with Rules and Regulations and the Bye-laws for administration and management of the Centre; he shall have the power to issue standing orders relating to the business of the Centre subject to the provisions of the Rules and Regulations and the Bye-laws; he shall allocate duties to the officers and staff of the Centre and shall exercise supervision, control and discipline as may be necessary. Therefore, the Director can, while exercising administrative and management functions of Centre relating to its business, certainly allocate duties to the officers and staff. In order to carry out the functioning and achieve objections of the Centre, he can create new divisions. In achieving the objectives, several laboratories have been established subject to approval by the Governing Council. One such laboratory is LDFR. One of the objects of the center is to provide DNA fingerprinting and related analysis to crime investigation and several other aspects. In the light of the foregoing discussion, I am of the considered opinion that the second respondent is competent to create a laboratory and he can assign duties to the officers who are having experience in related research work on the subject. So, the transfer of the petitioner can not be said to be a *mala fide* exercise of power because considering the experience of the petitioner in research work, he was transferred as Head of the LDFR to achieve the objectives of the Centre. It is not a case where the petitioner does not have any experience in research work of DNA fingerprinting. On the other hand, the bio-data of the petitioner indicates that he is having research experience in the area of DNA fingerprinting and its application in forensic investigations and clinical samples. Therefore, the post to which the petitioner was transferred is not totally a different post than the purpose for which the petitioner was recruited. Further more, after lapse of 9 months, the order of transfer is challenged. By virtue of this Order, the service conditions of the petitioner would not in any way be affected. Viewed from any

angle, the transfer order does not suffer from any infirmities so as to call for interference by this Court.

36. The Writ Petitions are devoid of merits and are, accordingly, dismissed. However, it is made clear that the respondents shall complete the disciplinary proceedings after giving reasonable opportunity to the petitioner within a period of four months from today. It is also made clear that the petitioner shall co-operate with the enquiry.

(K.C.Bhanu, J.)

29.09.2005

DRK